

PS : Bindapur

Section 91, 97 Delhi Police Act.

ORDER ON THE POINT OF DROPPING OF PROCEEDINGS AT THE STAGE OF SECTION 251 OF THE CRPC.

Introduction

1. 'The fence eats the crop' - Is this an appropriate metaphor for this case? The accused persons argue that it indeed is. But let us not get ahead of ourselves and begin at the beginnings : Pithily put, this is a case where a group of young men face trial for allegedly making obscene gestures and comments to women and behaving indecently in public, outside the Uttam Nagar (East) Metro Station, Delhi. The young men claim that they have been arbitrarily arrested and falsely implicated by the police.
2. Cognisance of the offence under Section 91 read with 97 of the Delhi Police Act, was taken by my Ld.Predecessor, on a complaint filed by HC [REDACTED] and the accused persons were summoned to face trial. The matter is at the stage of explanation of substance of accusation to the accused, within the meaning of Section 251 of the CrPC. The accused have argued that no case is made out against them even if the prosecution story is accepted at face value. This has led the court to examine the question : *Whether, on the basis of material brought on record, a prima facie case of indecent behavior is made out against the accused, or not ?*
3. Before embarking to decide this issue, let us briefly recapitulate the facts of the case :-

Brief Factual Background.

4. The prosecution claims that the accused persons were caught behaving indecently and teasing women outside the Uttam Nagar Metro Station, during a 'Shri. Jitachar Operation'. It is alleged that the accused persons were indulging in obscene gestures and using indecent language towards the women around the Metro Station. This led to the present complaint filed against the accused persons Under Section 91 read with 97 of the Delhi Police Act. The complaint has been filed by HC [REDACTED] on behalf of the Police Department.



5. **Per Contra**, the Accused persons have argued that they did not engage in any indecent behaviour and have been falsely implicated in this case. It has been contended that they are young students who were merely standing outside the Metro Station after an exam and discussing the same, along with their female friends, before they were to take a ride back home on the Metro. In order to substantiate this narrative, the accused persons had filed an application u/s 91 of the CrPC seeking production of CCTV footage from the Delhi Metro Rail Corporation. The Ld.Predecessor of this court, in his wisdom, had sought reply to this application from the IO concerned [sic : complainant]. The Complainant HC [REDACTED] in response to the application, obtained the CD of the CCTV footage and filed it on record.

6. Since the CCTV footage was the essence of the case and the best evidence available in the circumstances, the officials at Video Conferencing Room were instructed to make the necessary arrangements for playing the CD. The CD was played and examined in the Video Conferencing Room in the presence of the Ld.APP [REDACTED], representing the State, the Complainant HC [REDACTED] Ld.Legal Aid Counsel for Defence [REDACTED] and the Accused persons. Thereafter, Arguments were heard at length on the question as to whether sufficient material exists to take the matter to trial, or not.

Arguments Advanced by the Defence and the State on the point of Dropping of Proceedings.

7. The accused persons have argued that the proceedings against them be dropped on the premise that there is no sufficient ground to take the matter to trial, as the prosecution version does not make out a *prima facie* case against the accused. Ld.Legal Aid Counsel appearing for the Accused has argued, and with great vehemence, that the CCTV footage does not disclose any act on the part of the accused that would qualify as 'indecent', whichever way one looks at it. The accused are a bunch of youngsters who were discussing their exam; They were accompanied by female colleagues and there is no likelihood of them having indulged in such behaviour. He argues that this is a classic case where innocent youngsters have been falsely framed, merely with a view to bolster statistics by the police their so-called 'Shrishtachar Drive' and to propagandize an image of police as 'protectors of women'. He seeks exoneration of the accused persons on the ground of total lack of any material suggesting criminality on the part of the accused persons.



8. Per Contra, Ld.APP for the State has argued that the matter deserves to go to trial. He argues that the prosecution should be given an opportunity to prove the contents of the complaint by examination of witnesses. It is also argued that the veracity of the CCTV footage also needs to be examined, which can only be done at the stage of trial. He submits that the accused persons can patently be seen to be indulging in frivolity in the Video and possible mischievous behavior cannot be ruled out. He, therefore, argues that substance of accusation within the meaning of S.251 Cr.P.C be explained to the accused and after recording their plea, the matter may be fixed for trial.

9. Record Perused. Submissions Heard. The CCTV footage has been seen.

Issue of Legal permissibility of Dropping of Proceedings

10. At the very outset, it deserves to be noted that it is no longer *res integra* that there is no embargo on the power of a magistrate to drop proceedings at the stage of Section 251 of the CrPC.

11. The Hon'ble Supreme Court has decisively ruled in **Bhushan Kumar v. State (NCT of Delhi) (2012) 5 SCC 424**, that a magistrate would be within his power to drop proceedings against an accused in a summons case if the material on record does not make out a case against him. The relevant extract from the judgment, is being reproduced as follows :-

“
..
..

17) It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.”



It is manifest from the above discussion that if there is no prima facie case made out against the accused, the court would be within its powers to drop proceedings against the accused and the accused in a proper case need not go through the ignominy of a full fledged

trial to earn an exoneration. The only caveat being that the court, in deciding that question, confines itself to the material brought on record by the complainant, or material of unimpeachable/undisputed character.

Evaluation of the case of the Complainant

12. The legal permissibility of an exoneration at this stage & the scope of scrutiny being settled, the next question that arises is : **Whether the present case is a case which warrants the exercise of that power; In other words, whether there is sufficient material on record to make out, at least prima facie, an offence against the accused persons for having behaved indecently in public ?**

13. For that, one must first lay down, the broad essentials of the offence of '*indecent behaviour in public*' as defined in Section 91 of the Delhi Police Act :

Section 91 - Behaving indecently in public. No person shall wilfully and indecently expose his person in any street or public place or place of public resort or within sight of, and in such manner as to be seen from, any street or, public place or place of public resort, whether from within any house or building or not, or use indecent language or behave indecently or riotously or in a disorderly manner in a street or public place of public resort or in any office, police station or station house.

Section 97. Penalties for offences under Secs. 80 to 96. Any person who contravenes any of the provisions of Secs. 80 to 96 (both inclusive) shall, on conviction, be punished with fine which may extend to one hundred rupees, or, in default of payment of such fine, with imprisonment for a term not exceeding eight days.

It is apparent that Section 91 lays down the culpability and Section 97 lays down the liability, once the offence is made out.

The statutory provision being thus, it is apparent that the decision of the case would turn on juxtaposing the conduct of the accused persons on one hand with the meaning that one assigns to the word 'indecently'. The word 'indecently' has not been defined in the statutory dictionary appended to the Act. Therefore, the ordinary dictionary meaning has to be resorted to. According to the Oxford Dictionary of English Language, the word '*indecent*' is one that is not conforming with generally accepted standards of behaviour, especially in relation to sexual matters.

That being the test, let us proceed to see if the acts of the accused persons pass muster :



14. An examination of the CCTV footage manifests that the accused persons and their two female friends were merely standing outside the Metro Station Gate, talking and interacting amongst themselves *inter-se* and not with any outsider. The discussion, of-course, is animated and lively, and expectedly so considering the young age of the accused persons and the fact that they must be bustling with excitement and relief, which is natural after the conclusion of a strenuous exam. It is patent that, at no point during the entire video, the accused can be seen talking to, or gesturing towards any third person outside their group, let alone saying something objectionable. The youngsters, quite characteristically, appear to be totally oblivious to their surroundings and too engrossed in their own conversation, to be even noticing the people around. At no point, any member of the public took offence or objected to their behaviour. Therefore, the total absence of any reaction by the public to their acts convinces the court that their actions were not objectionable. Furthermore, what seriously undermines the believability quotient of prosecution story is the fact that the police party in the video is standing right next to accused persons and they also did not raise any demur to their actions, at any point in the video. Therefore, there is not even an iota of evidence to substantiate the prosecution story of indecent behaviour. Even on broad probabilities, it does not appear probable that the accused persons, of all the places, would choose to stand right next to the police party to indulge in the alleged behaviour, especially when accompanied by their own female colleagues.

15. The prosecution has also claimed that the accused persons were asked to cease and desist from behaving indecently, however, they persisted in their objectionable acts, inspite of warning. However, this assertion is not corroborated by the video at all. The video does not show the police party talking to the accused persons, at any stage prior to their eventual arrest. When the accused persons are finally escorted by the police towards the end of the video, it is clear that their female colleagues are left flabbergasted and cannot make sense of the situation, at all. They could not understand what went wrong. This is uncannily, and rather eerily, similar to Franz Kafka's 'The Trial' where the protagonist 'Joseph' is arrested, and thereafter prosecuted for an offence that he has no clue about. It pains the court to note that similar have been the trials and tribulations of the young students in the present case.

16. The APP's assertion that the veracity of the CCTV footage may be in dispute does not hold any water at all. It needs to be noted that the CD has been filed on record by none other than the Complainant himself, after obtaining it from the Delhi Metro Rail Corporation, and therefore it does not lie in the State's mouth to challenge the veracity of the CD, which is



their own document. It is to be noted that the CD was never made a part of the complaint in the first instance; it is at the instance of the accused persons only that the CCTV footage was made part of the record. Their persistent reliance on the CD as proof of their innocence also probablises that there was no wrong doing on their part. The initial non-filing of the CD reflects an attempt to suppress best evidence and to prevent disclosure and smokescreen the entire incident.


17. It is extremely important to point out that, though the complaint does allege that the accused persons teased women and uttered objectionable words, the same is a bald, vague and omnibus allegation, totally bereft of even basic particulars. The specific words alleged to have been uttered by the accused have not been mentioned. There is not even a single woman who has been named in the complaint as a witness. No single woman has come forward to complain against the present accused persons, till date in relation to this incident.

18. It also deserves mention that during the course of arguments, the complainant HC [REDACTED] frankly conceded before the court, that he was not present at the time of the alleged incidents and was informed of the same, only by his colleagues and he had arrived on the spot later. This is a most damning admission. The entire complaint can be thrown out on this ground alone. His assertions are nothing but hearsay. This assumes great significance in view of the absence of any real complainants in this case.

Conclusion

19. To sum up, the essential prosecution story that the accused persons persisted in their objectionable acts despite the police's warning and most conspicuous presence, does not inspire confidence at all. It is not only falsified by the video, but is an affront to dictates of natural human behaviour. The uniform still strikes a mortal fear in the hearts of people, especially of young students. The court is pained to note that prosecutions like these further go on to strengthen the fear of the police baton and alienate the public from the police. This is a case where the proverbial fence has tried eating the crop. However, the court shall not allow the same to happen. The innocuous behaviour of the young students has been labelled as 'unjustified'. Such arbitrary arrests and criminal prosecutions (or rather persecutions) without just cause, are a most egregious violation of the citizens' fundamental right to life and personal liberty.




6 of 7 

20. The court will be failing in its duty if certain directions are not passed with respect to this extremely appalling prosecution. As a last bastion of hope, the Court shall have to guard the proverbial guards. The DCP (South West) is directed to initiate an inquiry against the erring police officer(s), fix responsibility and file a compliance report before the court by the next date of hearing.

21. As regards the present case, in view of the total absence of any incriminating material against the accused persons. The proceedings against the accused persons [REDACTED] [REDACTED] and [REDACTED] are hereby dropped. Bail Bonds/Surety Bonds stand discharged. Documents, if any, on record be returned after cancellation of endorsements.

Re-notify on 15/10/2016.




(BHARAT CHUGH)
Judge Evening Court No.3,
South-West, Dwarka Courts
30/07/2016
Judge Evening Court
New Delhi